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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,201	07/22/2005	Nick Buckley	P08400US00/MP	8636
881 7590 01/24/2008 STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			EXAMINER BUI, LUAN KIM	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 01/24/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/511,201

Applicant(s)

BUCKLEY, NICK

Examiner

Luan K. Bui

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/31/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_.

The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the term "e.g." is indefinite because it has no clear meaning and should be replaced with a different term. In claims 1 and 3, the phrase "portions (8) reflecting the shape of the eggs" is vague, confusion and indefinite because it has no clear meaning since eggs are not claimed in combination with the packaging unit. In claim 3, the phrase "said substantially planar surface" lacks proper antecedent basis. Which planar surfaces? In claim 25, the phrase "the package unit" lacks proper antecedent basis.

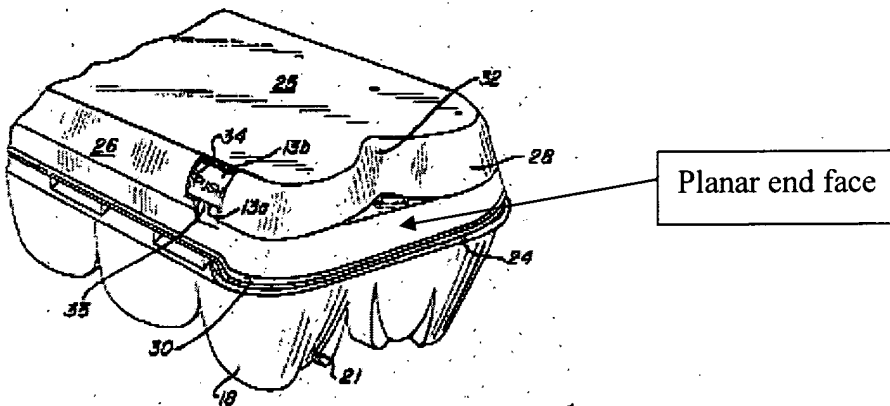
***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5, 6, 8, 9, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Misdorn, Jr. et al. (3,813,027; hereinafter Misdorn'027). To the extent that the Examiner can determine the scope of the claims, Misdorn'027 discloses a display and distribution packaging unit (10) for eggs and the unit formed from moulded pulp comprising a bottom part (11) having non-planar side surfaces of compartments (14) and a cover part (12) having a top surface (25), substantially planar front and rear surfaces (26, 27) and portions (28) reflecting the shape of the eggs contained within the unit. The portions located on substantially planar end faces (see the Figure below) of the cover part at either one or both longitudinal ends of the cover part.



5. Claims 1-3, 5, 6, 8, 9, 16-19, 24, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Hartmann (3,259,294). To the extent that the Examiner can determine the scope of the claims, Hartmann discloses a display and distribution packaging unit for eggs and the unit formed from moulded pulp comprising a bottom part (10) having non-planar side surfaces of compartments (20) and a cover part (12) having a top surface (24), substantially planar front and rear surfaces (see Figure 1) and portions (22) reflecting the shape of the eggs contained within

the unit. The portions located on substantially planar end faces of the cover part at either one or both longitudinal ends of the cover part.

As to claim 3, Hartmann further discloses the substantially planar front and rear surfaces of the cover part comprise the portions reflecting the shape of the eggs contained in the unit.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-9, 16-24 and 29-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Misdom, Jr. et al. (3,813,027; hereinafter Misdom'027) or Hartmann (3,259,294) in view of Bixler (3,362,605). Misdom'027 or Hartmann discloses the unit as above having all the limitations of the claims. To the extent that Misdom'027 or Hartmann fails to show the portions being located on substantially planar end faces, Bixler teaches a display and distribution packaging unit (10) for eggs comprising a bottom part (12) having non-planar side surfaces of compartments (24) and a cover part (14) having a top surface (40, 40'), substantially planar front and rear surfaces (42, 42' and Figure 1) and portions (46, 46') reflecting the shape of the eggs contained within the unit and the portions located on substantially planar surfaces (42, 42') of the cover part for better securing the eggs within the unit and to prevent the eggs from moving during shipping and/or handling. It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Bixler to modify the unit of Misdom'027 or

Hartmann so the portions are located on substantially planar end faces for decorative purposes and for better securing the eggs within the unit and to prevent the eggs from moving during shipping and/or handling.

8. Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of The French Patent No. FR2731986 to Menu (hereinafter Menu'986). Misdom'027 or Hartmann fails to show the portions comprise a surface structure being relatively smooth and the surface structure of the remaining surfaces of the unit being relatively coarse.

Menu'986 shows that it is old and conventional to provide a lid with the peripheral part of the lid's surface can be embossed/coarse and the central part of the lid's surface is not embossed/smooth. It would have been obvious to one having ordinary skill in the art in view of Menu'986 to modify the lid of Misdom'027 or Hartmann so the surface structure of the portions is constructed with relatively smooth and the remaining surface structure of the lid is relatively coarse for decorative purposes.

9. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of The French Publication No. 2.133.279 to Vauchier. Misdom'027 or Hartmann fails to show the interface between the cover part and the bottom part being inclined downwardly from the rear side of the packaging unit to the front side.

Vauchier shows a container comprising an interface between a cover part (11) and a bottom part (12) inclined downwardly from the rear side of the container to the front side (Figures 1-3). It would have been obvious to one having ordinary skill in the art in view of Vauchier to modify the packaging unit of Misdom'027 or Hartmann so the interface between the cover part and the bottom part inclined downwardly from the rear side of the packaging unit to the front side for better displaying the eggs and to facilitate removing the eggs from the packaging unit.

10. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Seest et al. (3,471,078; hereinafter Seest'078). Misdom'027 or Hartmann fails to show the lower edge of the front surface of the cover part being curved in a downward direction beneath the interfaced between the cover part and the bottom part.

Seest'078 shows a packaging unit comprising a cover part (12) having a front surface with a lower edge (36) curved in a downward direction beneath the interface (32, 38) between the cover part and a bottom part (10) to facilitate opening the unit. It would have been obvious to one having ordinary skill in the art in view of Seest'078 to modify the packaging unit of Misdom'027 or Hartmann so the lower edge of the front surface curved in a downward direction beneath the interface between the cover part and the bottom part to facilitate opening the unit.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lkb  
January 18, 2008

/Luan K. Bui/  
Primary Examiner  
Art Unit 3728